

REISSUE of U.S. Patent No. 5,812,249Applicant: JOHNSON *et al.*

Serial No: 09/667,693

Filing Date: September 22, 2000

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REMARKS

In response to the Non-Final Office Action mailed November 5, 2008 (hereinafter "Office Action"), claims 3 and 8 have been cancelled without prejudice or disclaimer, and claims 1, 7, and 9 have been amended. No claims have been newly added. Therefore, claims 1, 2, 4-7, and 9 are pending.

Pursuant to 37 C.F.R. § 1.173(c), a statement of the status and support for the claim changes is provided below. In view of the foregoing amendments and following comments, allowance of all the claims pending in the application is respectfully requested.

INFORMATION DISCLOSURE STATEMENT

Applicants are submitting herewith an Information Disclosure Statement and respectfully request that the Examiner consider the cited references and provide a signed copy of the Form PTO-1449 for this submission with the next Office Action.

37 C.F.R. § 1.173(c) STATEMENT

Pursuant to 37 C.F.R. § 1.173(c), the following is a statement of the status and support for the claim changes.

A. STATUS OF THE CLAIMS

Claims 1, 2, 4-7, and 9 are pending in the application.

Claims 3, 8, and 10-20 are cancelled.

More particularly:

- claims 1, 7, and 9 of U.S. Patent No. 5,812,249 have each been twice amended;
- claims 2 and 5 of U.S. Patent No. 5,812,249 have each been amended one time;
- claims 3 and 8 of U.S. Patent No. 5,812,249 have each been cancelled; and

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- claims 10-20, which were newly added in the Preliminary Amendment filed on September 22, 2000, were previously cancelled.

B. DESCRIPTION OF (AND SUPPORT FOR) CLAIM CHANGES

By this Amendment, claims 3 and 8 have been cancelled, and claims 1, 7, and 9 have been amended.

1. Independent Claim 1.

The word "and" in line 16 of independent claim 1 has been deleted.

The following recitation of a "vehicle emissions testing means" has been added at lines 17-18 of independent claim 1:

vehicle emissions testing means for obtaining exhaust emissions information for the motor vehicle; and

Support for this recitation may be found in the Specification (*i.e.*, U.S. Patent No. 5,812,249) at, for example, col. 1, lines 60-63; col. 5, lines 43-46; and FIGS. 1-2.

The recitation of "analyzing means" beginning at line 19 of independent claim 1 has been amended to further include the recitation "to be used in combination with the obtained exhaust emissions information" such that the full claim recitation is as follows:

analyzing means receiving said output signals from said first and second detectors for calculating the speed and acceleration of the motor vehicle to be used in combination with the obtained exhaust emissions information.

Support for this recitation may be found in the Specification at, for example, col. 1, lines 60-63; col. 5, lines 43-46; col. 5, lines 57-63; and FIGS. 1-2.

2. Independent Claim 7.

The word "and" in line 11 of independent claim 7 has been deleted.

A ";" has been added to the end of the "calculating" recitation at line 13 of independent claim 7.

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The following two claim recitations have been newly added to the end of independent claim 7 (at lines 14-16):

obtaining exhaust emissions data from the motor vehicle; and

utilizing the calculated speed value and the calculated acceleration value in an analysis of the obtained exhaust emissions data.

Support for the "obtaining" recitation may be found in the Specification at, for example, col. 1, lines 60-63; col. 5, lines 43-46; and FIGS. 1-2.

Support for the "utilizing" recitation may be found in the Specification at, for example, col. 1, lines 60-63; col. 5, lines 43-46; col. 5, lines 57-63; and FIGS. 1-2.

3. Independent Claim 9.

The word "and" in line 14 of independent claim 9 has been deleted.

The following recitation of a "vehicle emissions testing means" has been added at lines 15-16 of independent claim 9:

vehicle emissions testing means for obtaining exhaust emissions information for the motor vehicle; and

Support for this recitation may be found in the Specification at, for example, col. 1, lines 60-63; col. 5, lines 43-46; and FIGS. 1-2.

A comma (",") has been added after the word "vehicle" in line 18 of independent claim 9, as well as after the word "distance" in line 18 of independent claim 9.

The recitation of "calculating means" beginning at line 17 of independent claim 9 has been amended to further include the recitation "to be used in combination with the obtained exhaust emissions information" such that the full claim recitation is as follows:

calculating means receiving said time measurements from said measuring means for calculating an acceleration of the motor vehicle, based on said predetermined distance, to be used in combination with the obtained exhaust emissions information.

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Support for this recitation may be found in the Specification at, for example, col. 1, lines 60-63; col. 5, lines 43-46; col. 5, lines 57-63; and FIGS. 1-2.

REJECTION UNDER 35 U.S.C. § 103, AND INDICATION OF ALLOWABLE SUBJECT MATTER

Claims 1, 2, 4-7, and 9 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 4,427,768 to Elmer *et al.* (hereinafter "Elmer") in view of U.S. Patent No. 5,298,738 to Gebert *et al.* (hereinafter "Gebert") [Office Action, pg. 2]. The Examiner has indicated that dependent claims 3 and 8 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims [Office Action, pg. 4].

Applicants disagree with the propriety of the rejection. However, *solely* in an effort to expedite prosecution, and in no way acquiescing to the propriety of the alleged rejections, independent claims 1, 7, and 9 have been amended to clarify aspects of the invention.

In particular, independent claims 1 and 9 have each been amended to positively recite, *inter alia*, vehicle emissions testing means obtaining exhaust emissions information for the motor vehicle. Although the "vehicle emissions testing means" was previously recited in dependent claim 3 (now cancelled), Applicants did *not* further amend independent claim 1 to include the features of intervening dependent claim 2. Such an amendment is not necessary, as neither Elmer nor Gebert, either alone or in combination, teach *at least* vehicle emissions testing means.

Independent claim 7 has been amended to recite the features from dependent claim 8 (now cancelled) in accordance with the Examiner's indication of allowable subject matter.

In view of the foregoing, pending claims 1, 2, 4-7, and 9 are patentable over the alleged combination of Elmer and Gebert. Notice to that effect is respectfully requested.

Applicants explicitly reserve the right to pursue the claims as pending prior to entry of the instant amendment in a continuation application. Additionally, although it is not

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necessary at this time for Applicants to address the Examiner's conclusory and unsupported assertions underlying the alleged rejections of dependent claims 2, and 4-6 [Office Action, pg. 3], Applicants explicitly reserve the right to traverse these rejections should the need arise.

CONCLUSION

Having addressed each of the foregoing rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action and, as such, the application is in condition for allowance. Notice to that effect is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Respectfully submitted,

Date: May 5, 2009

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